In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 1095

H. J. RYAN, APPELLANT

v.

THE PRESIDENT OF THE SENATE

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION TO DISMISS

Pursuant to Rule 16, paragraph 1(c) of the Revised Rules of this Court, the appellee moves that the appeal be dismissed.

DISCUSSION

Appellant seeks to appeal from a court of appeals' judgment, entered on February 22, 1963, affirming a decision of the district court dismissing his complaint, filed against the Vice President in his official capacity as President of the Senate. The complaint contended that the November 1960 presidential election was unconstitutional because of certain alleged deficiencies in the selection of the electoral college.[1]

[1] Appellant has also challenged the validity of the 1960 election in other litigation. Prior to instituting this action

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On March 19th and 31st respectively, appellant forwarded a notice of appeal and an amended notice of appeal to this Court and to the Court of Appeals for the Sixth Circuit. On May 14, 1963, he filed a "jurisdictional statement" in this Court.

Appellant bases his appeal on 28 U.S.C. 1253 (J. 14),[2] which provides for direct appeal to this Court in any case required to be heard by a three-judge district court. However, the decision of which appellant seeks review, is an order of a court of appeals and not of a three-judge district court. To be sure, appellant did initially request a hearing before a three-judge district court. On July 18, 1962, the district court denied that motion, granted the appellee's motion that service of process be quashed, and dismissed the cause. Thereafter, appellant appealed to the Sixth Circuit on the merits of his cause, raising no objection to the denial of his motion for a three-judge district court. Nor does he here take issue with the propriety of that denial, apparently being satisfied at having been "given a 3-Judge Hearing by the United States Appeals Court for [the] Sixth District" (J. 9). Accordingly, it is clear that this cause is not reviewable under this Court's appellate jurisdiction.

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appellant raised similar contentions in *H. J. Ryan* v. *The President of the Senate*, Civil No. 845-61 (D. D.C.). In *H. J. Ryan* v. *Chairman and Committee on Elections*, Civil No. 1222-61 (D. D.C.), he sought a declaration that the use of election machines in the 1960 election was unconstitutional. The Court of Appeals for the District of Columbia Circuit affirmed the dismissal of each of those suits on December 8, 1961 (Nos. 16,633 and 16,634, unreported).

[2] "J." refers to the "Jurisdictional Statement."

Treating appellant's papers as a petition for a writ of certiorari, appellant's contentions are clearly frivolous. It is plain that the district court properly quashed process on the Vice President, the sole defendant, because service could not be affected with respect to such a suit in the Middle District of Tennessee. Rule 4(f) of the Federal Rules of Civil Procedure provides that service may be made only within the territorial limits in which the district court sits, unless a federal statute provides for service elsewhere. Since no federal statute provides for service in this kind of suit beyond the state of the district court and the Vice President is not resident in Tennessee, the district court properly quashed the process and dismissed the suit for failure of service. Furthermore, it is obvious that appellant has no standing to bring this action. He has no special interest in the 1960 election apart from the public in general. This Court has held that such plaintiffs have no standing to sue. *E.g., Frothingham* v. *Mellon,* 262 U.S. 447. And finally, appellant's contention—that the 1960 presidential election was unconstitutional because the electors in various states were not appointed by the state legislatures—is obviously frivolous on its merits. Article 2, Section 1, of the Constitution provides that the electors shall be appointed as the legislatures direct. Thus, the legislatures have authority to provide that the electors shall be chosen by vote of the people in the state.

CONCLUSION

We respectfully submit that the appeal should be dismissed. Treating appellant's papers as a petition for a writ of certiorari, we submit that the petition should be denied.

ARCHIBALD COX,
Solicitor General.
JOHN W. DOUGLAS,
Assistant Attorney General.
SHERMAN L. COHN,
EDWARD BERLIN,
Attorneys.

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